The Utah Scheme – Utah's Two Tier Appellate Process in Justice Courts

Utah Code Ann. § 76-5-120
Rule 4-608, Utah Rules of Judicial Administration
Rule 27, Utah Rules of Criminal Procedure

UTAH CODE ANN. § 78-5-120

78-5-120. Appeals from justice court - Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:
(a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt; or
(b) a plea of guilty in the justice court that is held in abeyance.
(2) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.
(3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if he files a notice of appeal within 30 days of:
(a) an order revoking probation;
(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;
(c) a sentence entered pursuant to Subsection (3)(b); or
(d) an order denying a motion to withdraw a plea.
(4) The prosecutor is entitled to a hearing de novo in the district court on:
(a) a final judgment of dismissal;

(b) an order arresting judgment;
(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;
(d) a judgment holding invalid any part of a statute or ordinance;
(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution; or
(f) an order granting a motion to withdraw a plea of guilty or no contest.
(5) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:
(a) the decision results in immediate dismissal of the case;
(b) with agreement of the parties, the district court consents to retain jurisdiction; or
(c) the defendant enters a plea of guilty in the district court.
(6) The district court shall retain jurisdiction over the case on trial de novo.
(7) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

History: C. 1953, 78-5-120, enacted by L. 2001, ch. 122, § 1; 2001 (1st S.S.), ch. 4, § 5.
Rule 4-608, Utah Rules of Judicial Administration

Rule 4-608. Trials de novo of justice court proceedings in criminal cases.
(OLD RULE 4-608)

Intent:
To establish uniform procedures governing trials de novo of justice court adjudications.

Applicability:

This rule shall apply to district and justice courts in trial de novo proceedings where the notice of appeal is filed with the justice court.

Statement of the Rule:
(1) General provisions.
(A) Right to trial de novo. Any party to a judgment of the justice court may obtain a trial de novo.
(B) Venue. The trial de novo of a justice court adjudication in a criminal case shall be heard in the district court location nearest to and in the same county as the justice court from which the appeal is taken. Either party may move for a change of venue under the applicable Rules of Criminal Procedure.
(2) Criminal appeals.
(A) General provisions. The trial de novo of a justice court adjudication in a criminal case shall be held in accordance with Rule 4-803 governing trials de novo in small claims cases, except that no bond for costs on appeal or filing fees shall be required of a criminal defendant.
(B) The notice of appeal. The notice of appeal must be filed within thirty days of the entry of judgment. The justice court shall transmit to the district court a certified copy of the docket, the information or waiver of information, the judgment and sentence and other papers filed in the case within twenty days after receipt of the notice of appeal.
(C) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court shall be stayed.
(D) Orders governing trial de novo. Upon the filing of the notice of appeal, the district court shall issue all further orders governing the trial de novo, including posting of bail and release from custody.
(E) Disposition. The trial de novo shall be conducted in the district court as if the matter were originally filed in that court and the disposition of fine revenue shall be according to

district court procedures. Upon entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case. Such notice shall be for informational purposes only and shall not be construed as a remand of the case inasmuch as a remand of a de novo proceeding is not authorized.
(F) Appeal from de novo review. The prosecution may take an appeal from a de novo review of the district court only as provided for in the Rules of Criminal Procedure.
(G) Traffic convictions. Notwithstanding the filing of a notice of appeal, if a person is convicted of a traffic offense in justice court, the justice court shall require the person to surrender all of his or her license certificates and the justice court shall forward them with the record of conviction to the Driver License Division within ten days as provided in Utah Code Ann. Section 53-3-218.

Rules History
History: Amended effective January 15, 1990; November 1, 1996; April 1, 1998; April 29, 1999.

Rule 4-608. Trials de novo of justice court proceedings in criminal cases.
NEW RULE 4-608

Intent:
To establish uniform procedures governing trials de novo and hearings de novo of justice court adjudications.

Applicability:
This rule shall apply to district and justice courts in trials de novo and hearings de novo in which the notice of appeal is filed with the justice court.

Statement of the Rule:
(1) Right to appeal. Appeal of a judgment or order of the justice court is as provided in Utah Code Ann. Section 78-5-120.
(2) Venue. The appeal shall be heard in the district court location nearest to and in the same county as the justice court from which the appeal is taken. Either party may move for a change of venue under the applicable Rules of Criminal Procedure.
(3) The notice of appeal. The notice of appeal must be filed within thirty days of the entry of judgment or order. Within twenty days after receipt of the notice of appeal, the justice court shall transmit to the district court a certified copy of the docket, the information or waiver of information, the judgment and sentence and other orders and papers filed in the case.
(4) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court shall be stayed.
(5) Orders. Upon the filing of the notice of appeal, the district court shall issue all further orders governing the trial de novo or hearing de novo, including posting of bail and release from custody.
(6) Proceedings and order of the district court. The district court shall conduct anew the proceedings on which the judgment or order appealed from are based. Unless the case is remanded, the disposition of fine revenue shall be according to district court procedures. Upon entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case.
(7) Remand. The district court may dismiss the appeal and remand the case to the justice court if the appellant:
(A) fails to appear,
(B) fails to take steps necessary to prosecute the appeal, or

(C) requests the appeal be dismissed.
Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court as required by Utah Code Ann. Section 78-5-120.
(8) Traffic convictions. Notwithstanding the filing of a notice of appeal, if a person is convicted of a traffic offense in justice court, the justice court shall require the person to surrender all of his or her license certificates and the justice court shall forward them with the record of conviction to the Driver License Division within ten days as provided in Utah Code Ann. Section 53-3-218.
Rules History
History: Amended April 1, 2002.

Rule 27, Utah Rules of Criminal Procedure

Rule 27. Stays pending appeal.

(a) (1) A sentence of death shall be stayed if an appeal or a petition for other relief is pending.
(2) A sentence of fine, imprisonment, or probation shall be stayed if an appeal is taken and a certificate of probable cause is issued.
(3) When an appeal is taken by the state, a stay of any order of judgment in favor of the defendant may be granted by the court upon good cause pending disposition of the appeal.
(b) A person who has been found guilty of an offense and sentenced to a term of incarceration in jail or prison, and who has filed a notice of appeal, shall be detained, unless the trial judge issues a certificate of probable cause and determines by clear and convincing evidence that the defendant is not likely to flee during pendency of the appeal and that the defendant will not pose a danger to the safety of any other person or the community if released under any of the conditions set forth in paragraph (g).

(c) If the trial court denies the defendant a certificate of probable cause, or finds that the defendant is likely to flee or poses a danger to the safety of any other person or the community and denies release, the decision may be appealed to the court in which the notice of appeal of the conviction has been filed.

(d) (1) No certificate of probable cause shall issue except upon application of the defendant filed with the appropriate court.

(2) The application for a certificate of probable cause shall be in writing and accompanied by a memorandum of law identifying the issues to be presented on appeal and supporting the defendant's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.

(3) If release is denied, any appeal shall be accompanied by an affidavit made and signed by counsel for the defendant, or by the defendant if the defendant is not represented by counsel. The affidavit shall contain the following:

(A) A narration of the relevant facts developed at trial;

(B) A statement of the crime(s) of which the defendant was convicted;

(C) A statement setting out the sentence imposed; and

(D) A statement that the defendant has previously applied for a certificate of probable cause, setting forth the issues that were presented to the court, the court's ruling and the reasons given in support of the ruling.

(e) A copy of the application for a certificate of probable cause and a copy of the memorandum shall be served on the prosecuting attorney. The prosecuting attorney may file a written reply within 10 days after receipt of the application. A hearing on the application shall be held within 10 days after the appropriate court receives the prosecuting attorney's reply, or if no reply is filed, within 15 days after the application is filed with the court.

(f) No certificate of probable cause shall issue and the defendant shall be detained unless the appropriate court finds that the appeal:
(1) is not being taken for the purpose of delay; and
(2) raises substantial issues of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.
(g) If the court determines that the defendant may be released pending appeal, it may release the defendant on the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community, which conditions may include, without limitation, that the defendant:
(1) is admitted to appropriate bail;
(2) not commit a federal, state or local crime during the period of release;
(3) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person will appear as required and will not pose a danger to the safety of any other person or the community;
(4) maintain employment, or if unemployed, actively seek employment;
(5) maintain or commence an educational program;
(6) abide by specified restrictions on personal associations, place of abode or travel;
(7) avoid all contact with the victim or victims of the crime(s), any witness or witnesses who testified against the defendant and any potential witnesses who might testify concerning the offenses if the appeal results in a reversal or an order for a new trial;
(8) report on a regular basis to a designated law enforcement agency, pretrial services agency or other agency;
(9) comply with a specified curfew;

(10) refrain from possessing a firearm, destructive device or other dangerous weapon;
(11) refrain from possessing or using alcohol, or any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner;
(12) undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol abuse or dependency;
(13) execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court may specify;
(14) return to custody for specified hours following release for employment, schooling or other limited purposes; and
(15) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of persons and property in the community.
(h) The court may at any time for good cause shown amend the order granting release to impose additional or different conditions of release.

History: Amended effective May 1, 1993.